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SENATE BILL 6649

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State of Washington                      64th Legislature                      2016 Regular Session

By Senators Nelson and Hasegawa

Read first time 02/05/16. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to collection agency practices; and amending RCW  
2 19.16.100, 19.16.250, and 19.16.270.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 19.16.100 and 2015 c 201 s 3 are each amended to  
5 read as follows:

6            Unless a different meaning is plainly required by the context,  
7 the following words and phrases as hereinafter used in this chapter  
8 shall have the following meanings:

9            (1) "Account level documentation" means all records generated by  
10 the original creditor or received by the original creditor from the  
11 debtor related to a claim in collection including, but not limited  
12 to: The original contract and terms and conditions of the account,  
13 periodic statements of accounts due, and records of payments,  
14 letters, and other account notices.

15            (2) "Board" means the Washington state collection agency board.

16            ((+2)) (3) "Claim" means any obligation for the payment of money  
17 or thing of value arising out of any agreement or contract, express  
18 or implied.

19            ((+3)) (4) "Client" or "customer" means any person authorizing  
20 or employing a collection agency to collect a claim.

21            ((+4)) (5) "Collection agency" means and includes:

1 (a) Any person directly or indirectly engaged in soliciting  
2 claims for collection, or collecting or attempting to collect claims  
3 owed or due or asserted to be owed or due another person;

4 (b) Any person who directly or indirectly furnishes or attempts  
5 to furnish, sells, or offers to sell forms represented to be a  
6 collection system or scheme intended or calculated to be used to  
7 collect claims even though the forms direct the debtor to make  
8 payment to the creditor and even though the forms may be or are  
9 actually used by the creditor himself or herself in his or her own  
10 name;

11 (c) Any person who in attempting to collect or in collecting his  
12 or her own claim uses a fictitious name or any name other than his or  
13 her own which would indicate to the debtor that a third person is  
14 collecting or attempting to collect such claim;

15 (d) Any person or entity that is engaged in the business of  
16 purchasing delinquent or charged off claims for collection purposes,  
17 whether it collects the claims itself or hires a third party for  
18 collection or an attorney for litigation in order to collect such  
19 claims;

20 (e) Any person or entity attempting to enforce a lien under  
21 chapter 60.44 RCW, other than the person or entity originally  
22 entitled to the lien.

23 ((+5)) (6) "Collection agency" does not mean and does not  
24 include:

25 (a) Any individual engaged in soliciting claims for collection,  
26 or collecting or attempting to collect claims on behalf of a licensee  
27 under this chapter, if said individual is an employee of the  
28 licensee;

29 (b) Any individual collecting or attempting to collect claims for  
30 not more than one employer, if all the collection efforts are carried  
31 on in the name of the employer and if the individual is an employee  
32 of the employer;

33 (c) Any person whose collection activities are carried on in his,  
34 her, or its true name and are confined and are directly related to  
35 the operation of a business other than that of a collection agency,  
36 such as but not limited to: Trust companies; savings and loan  
37 associations; building and loan associations; abstract companies  
38 doing an escrow business; real estate brokers; property management  
39 companies collecting assessments, charges, or fines on behalf of  
40 condominium unit owners associations, associations of apartment

1 owners, or homeowners' associations; public officers acting in their  
2 official capacities; persons acting under court order; lawyers;  
3 insurance companies; credit unions; loan or finance companies;  
4 mortgage banks; and banks;

5 (d) Any person who on behalf of another person prepares or mails  
6 monthly or periodic statements of accounts due if all payments are  
7 made to that other person and no other collection efforts are made by  
8 the person preparing the statements of account;

9 (e) An "out-of-state collection agency" as defined in this  
10 chapter; or

11 (f) Any person while acting as a debt collector for another  
12 person, both of whom are related by common ownership or affiliated by  
13 corporate control, if the person acting as a debt collector does so  
14 only for persons to whom it is so related or affiliated and if the  
15 principal business of the person is not the collection of debts.

16 (~~(6)~~) (7) "Commercial claim" means any obligation for payment  
17 of money or thing of value arising out of any agreement or contract,  
18 express or implied, where the transaction which is the subject of the  
19 agreement or contract is not primarily for personal, family, or  
20 household purposes.

21 (~~(7)~~) (8) "Debtor" means any person owing or alleged to owe a  
22 claim.

23 (~~(8)~~) (9) "Director" means the director of licensing.

24 (~~(9)~~) (10) "Licensee" means any person licensed under this  
25 chapter.

26 (~~(10)~~) (11) "Out-of-state collection agency" means a person  
27 whose activities within this state are limited to collecting debts  
28 from debtors located in this state by means of interstate  
29 communications, including telephone, mail, or facsimile transmission,  
30 from the person's location in another state on behalf of clients  
31 located outside of this state, but does not include any person who is  
32 excluded from the definition of the term "debt collector" under the  
33 federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

34 (~~(11)~~) (12) "Person" includes individual, firm, partnership,  
35 trust, joint venture, association, or corporation.

36 (~~(12)~~) (13) "Statement of account" means a report setting forth  
37 only amounts billed, invoices, credits allowed, or aged balance due.

38 **Sec. 2.** RCW 19.16.250 and 2013 c 148 s 2 are each amended to  
39 read as follows:

1 No licensee or employee of a licensee shall:

2 (1) Directly or indirectly aid or abet any unlicensed person to  
3 engage in business as a collection agency in this state or receive  
4 compensation from such unlicensed person: PROVIDED, That nothing in  
5 this chapter shall prevent a licensee from accepting, as forwarder,  
6 claims for collection from a collection agency or attorney whose  
7 place of business is outside the state.

8 (2) Collect or attempt to collect a claim by the use of any means  
9 contrary to the postal laws and regulations of the United States  
10 postal department.

11 (3) Publish or post or cause to be published or posted, any list  
12 of debtors commonly known as "bad debt lists" or threaten to do so.  
13 For purposes of this chapter, a "bad debt list" means any list of  
14 natural persons alleged to fail to honor their lawful debts. However,  
15 nothing herein shall be construed to prohibit a licensee from  
16 communicating to its customers or clients by means of a coded list,  
17 the existence of a check dishonored because of insufficient funds,  
18 not sufficient funds or closed account by the financial institution  
19 servicing the debtor's checking account: PROVIDED, That the debtor's  
20 identity is not readily apparent: PROVIDED FURTHER, That the licensee  
21 complies with the requirements of subsection (10)(e) of this section.

22 (4) Have in his or her possession or make use of any badge, use a  
23 uniform of any law enforcement agency or any simulation thereof, or  
24 make any statements which might be construed as indicating an  
25 official connection with any federal, state, county, or city law  
26 enforcement agency, or any other governmental agency, while engaged  
27 in collection agency business.

28 (5) Perform any act or acts, either directly or indirectly,  
29 constituting the unauthorized practice of law.

30 (6) Advertise for sale or threaten to advertise for sale any  
31 claim as a means of endeavoring to enforce payment thereof or  
32 agreeing to do so for the purpose of soliciting claims, except where  
33 the licensee has acquired claims as an assignee for the benefit of  
34 creditors or where the licensee is acting under court order.

35 (7) Use any name while engaged in the making of a demand for any  
36 claim other than the name set forth on his or her or its current  
37 license issued hereunder.

38 (8) Give or send to any debtor or cause to be given or sent to  
39 any debtor, any notice, letter, message, or form, other than through  
40 proper legal action, process, or proceedings, which represents or

1 implies that a claim exists unless it shall indicate in clear and  
2 legible type:

3 (a) The name of the licensee and the city, street, and number at  
4 which he or she is licensed to do business;

5 (b) The name of the original creditor to whom the debtor owed the  
6 claim if such name is known to the licensee or employee: PROVIDED,  
7 That upon written request of the debtor, the licensee shall provide  
8 this name to the debtor or cease efforts to collect on the debt until  
9 this information is provided;

10 (c) If the notice, letter, message, or form is the first notice  
11 to the debtor or if the licensee is attempting to collect a different  
12 amount than indicated in his or her or its first notice to the  
13 debtor, an itemization of the claim asserted must be made including:

14 (i) Amount owing on the original obligation at the time it was  
15 received by the licensee for collection or by assignment;

16 (ii) Interest or service charge, collection costs, or late  
17 payment charges, if any, added to the original obligation by the  
18 original creditor, customer or assignor before it was received by the  
19 licensee for collection, if such information is known by the licensee  
20 or employee: PROVIDED, That upon written request of the debtor, the  
21 licensee shall make a reasonable effort to obtain information on such  
22 items and provide this information to the debtor;

23 (iii) Interest or service charge, if any, added by the licensee  
24 or customer or assignor after the obligation was received by the  
25 licensee for collection;

26 (iv) Collection costs, if any, that the licensee is attempting to  
27 collect;

28 (v) Attorneys' fees, if any, that the licensee is attempting to  
29 collect on his or her or its behalf or on the behalf of a customer or  
30 assignor; and

31 (vi) Any other charge or fee that the licensee is attempting to  
32 collect on his or her or its own behalf or on the behalf of a  
33 customer or assignor;

34 (d) If the notice, letter, message, or form concerns a judgment  
35 obtained against the debtor, no itemization of the amounts contained  
36 in the judgment is required, except postjudgment interest, if  
37 claimed, and the current account balance;

38 (e) If the notice, letter, message, or form is the first notice  
39 to the debtor, an itemization of the claim asserted must be made  
40 including the following information:

1 (i) The original account number or redacted original account  
2 number assigned to the debt, if known to the licensee or employee:  
3 PROVIDED, That upon written request of the debtor, the licensee must  
4 make a reasonable effort to obtain this information or cease efforts  
5 to collect on the debt until this information is provided; (~~and~~)

6 (ii) The date of the last payment to the creditor on the subject  
7 debt by the debtor, if known to the licensee or employee: PROVIDED,  
8 That upon written request of the debtor, the licensee must make a  
9 reasonable effort to obtain this information or cease efforts to  
10 collect on the debt until this information is provided;

11 (iii) Certification that the itemization of the claim was made  
12 based on a personal review of account level documentation provided by  
13 the original creditor; and

14 (iv) A copy of the account level documentation reviewed by the  
15 licensee pursuant to (e)(iii) of this subsection (8).

16 (9) Communicate in writing with a debtor concerning a claim  
17 through a proper legal action, process, or proceeding, where such  
18 communication is the first written communication with the debtor,  
19 without providing the information set forth in subsection (8)(c) of  
20 this section in the written communication.

21 (10) Communicate or threaten to communicate, the existence of a  
22 claim to a person other than one who might be reasonably expected to  
23 be liable on the claim in any manner other than through proper legal  
24 action, process, or proceedings except under the following  
25 conditions:

26 (a) A licensee or employee of a licensee may inform a credit  
27 reporting bureau of the existence of a claim. If the licensee or  
28 employee of a licensee reports a claim to a credit reporting bureau,  
29 the licensee shall, upon receipt of written notice from the debtor  
30 that any part of the claim is disputed, notify the credit reporting  
31 bureau of the dispute by written or electronic means and create a  
32 record of the fact of the notification and when the notification was  
33 provided;

34 (b) A licensee or employee in collecting or attempting to collect  
35 a claim may communicate the existence of a claim to a debtor's  
36 employer if the claim has been reduced to a judgment;

37 (c) A licensee or employee in collecting or attempting to collect  
38 a claim that has not been reduced to judgment, may communicate the  
39 existence of a claim to a debtor's employer if:

1 (i) The licensee or employee has notified or attempted to notify  
2 the debtor in writing at his or her last known address or place of  
3 employment concerning the claim and the debtor after a reasonable  
4 time has failed to pay the claim or has failed to agree to make  
5 payments on the claim in a manner acceptable to the licensee, and

6 (ii) The debtor has not in writing to the licensee disputed any  
7 part of the claim: PROVIDED, That the licensee or employee may only  
8 communicate the existence of a claim which has not been reduced to  
9 judgment to the debtor's employer once unless the debtor's employer  
10 has agreed to additional communications.

11 (d) A licensee may for the purpose of locating the debtor or  
12 locating assets of the debtor communicate the existence of a claim to  
13 any person who might reasonably be expected to have knowledge of the  
14 whereabouts of a debtor or the location of assets of the debtor if  
15 the claim is reduced to judgment, or if not reduced to judgment,  
16 when:

17 (i) The licensee or employee has notified or attempted to notify  
18 the debtor in writing at his or her last known address or last known  
19 place of employment concerning the claim and the debtor after a  
20 reasonable time has failed to pay the claim or has failed to agree to  
21 make payments on the claim in a manner acceptable to the licensee,  
22 and

23 (ii) The debtor has not in writing disputed any part of the  
24 claim.

25 (e) A licensee may communicate the existence of a claim to its  
26 customers or clients if the claim is reduced to judgment, or if not  
27 reduced to judgment, when:

28 (i) The licensee has notified or attempted to notify the debtor  
29 in writing at his or her last known address or last known place of  
30 employment concerning the claim and the debtor after a reasonable  
31 time has failed to pay the claim or has failed to agree to make  
32 payments on the claim in a manner acceptable to the licensee, and

33 (ii) The debtor has not in writing disputed any part of the  
34 claim.

35 (11) Threaten the debtor with impairment of his or her credit  
36 rating if a claim is not paid: PROVIDED, That advising a debtor that  
37 the licensee has reported or intends to report a claim to a credit  
38 reporting agency is not considered a threat if the licensee actually  
39 has reported or intends to report the claim to a credit reporting  
40 agency.

1 (12) Communicate with the debtor after notification in writing  
2 from an attorney representing such debtor that all further  
3 communications relative to a claim should be addressed to the  
4 attorney: PROVIDED, That if a licensee requests in writing  
5 information from an attorney regarding such claim and the attorney  
6 does not respond within a reasonable time, the licensee may  
7 communicate directly with the debtor until he or she or it again  
8 receives notification in writing that an attorney is representing the  
9 debtor.

10 (13) Communicate with, or attempt to communicate with, a debtor  
11 or anyone else in such a manner as to harass, intimidate, threaten,  
12 or embarrass a debtor, including but not limited to communication at  
13 an unreasonable hour, with unreasonable frequency, by threats of  
14 force or violence, by threats of criminal prosecution, and by use of  
15 offensive language. A communication, or attempted communication,  
16 shall be presumed to have been made for the purposes of harassment  
17 if:

18 (a) It is made with a debtor or spouse in any form, manner, or  
19 place, more than three times in a single week, unless the licensee is  
20 responding to a communication from the debtor or spouse;

21 (b) It is made with a debtor at his or her place of employment  
22 more than one time in a single week, unless the licensee is  
23 responding to a communication from the debtor;

24 (c) It is made with the debtor or spouse at his or her place of  
25 residence between the hours of 9:00 p.m. and 7:30 a.m. A call to a  
26 telephone is presumed to be received in the local time zone to which  
27 the area code of the number called is assigned for landline numbers,  
28 unless the licensee reasonably believes the telephone is located in a  
29 different time zone. If the area code is not assigned to landlines in  
30 any specific geographic area, such as with toll-free telephone  
31 numbers, a call to a telephone is presumed to be received in the  
32 local time zone of the debtor's last known place of residence, unless  
33 the licensee reasonably believes the telephone is located in a  
34 different time zone.

35 (14) Communicate with the debtor through use of forms or  
36 instruments that simulate the form or appearance of judicial process,  
37 the form or appearance of government documents, or the simulation of  
38 a form or appearance of a telegraphic or emergency message.

39 (15) Communicate with the debtor and represent or imply that the  
40 existing obligation of the debtor may be or has been increased by the



1 addition of attorney fees, investigation fees, service fees, or any  
2 other fees or charges when in fact such fees or charges may not  
3 legally be added to the existing obligation of such debtor.

4 (16) Threaten to take any action against the debtor which the  
5 licensee cannot legally take at the time the threat is made.

6 (17) Send any telegram or make any telephone calls to a debtor or  
7 concerning a debt or for the purpose of demanding payment of a claim  
8 or seeking information about a debtor, for which the charges are  
9 payable by the addressee or by the person to whom the call is made:

10 PROVIDED, That:

11 (a) This subsection does not prohibit a licensee from attempting  
12 to communicate by way of a cellular telephone or other wireless  
13 device: PROVIDED, That a licensee cannot cause charges to be incurred  
14 to the recipient of the attempted communication more than three times  
15 in any calendar week when the licensee knows or reasonably should  
16 know that the number belongs to a cellular telephone or other  
17 wireless device, unless the licensee is responding to a communication  
18 from the debtor or the person to whom the call is made.

19 (b) The licensee is not in violation of (a) of this subsection if  
20 the licensee at least monthly updates its records with information  
21 provided by a commercial provider of cellular telephone lists that  
22 the licensee in good faith believes provides reasonably current and  
23 comprehensive data identifying cellular telephone numbers, calls a  
24 number not appearing in the most recent list provided by the  
25 commercial provider, and does not otherwise know or reasonably should  
26 know that the number belongs to a cellular telephone.

27 (c) This subsection may not be construed to increase the number  
28 of communications permitted pursuant to subsection (13)(a) of this  
29 section.

30 (18) Call, or send a text message or other electronic  
31 communication to, a cellular telephone or other wireless device more  
32 than twice in any day when the licensee knows or reasonably should  
33 know that the number belongs to a cellular telephone or other  
34 wireless device, unless the licensee is responding to a communication  
35 from the debtor or the person to whom the call, text message, or  
36 other electronic communication is made. The licensee is not in  
37 violation of this subsection if the licensee at least monthly updates  
38 its records with information provided by a commercial provider of  
39 cellular telephone lists that the licensee in good faith believes  
40 provides reasonably current and comprehensive data identifying

1 cellular telephone numbers, calls a number not appearing in the most  
2 recent list provided by the commercial provider, and does not  
3 otherwise know or reasonably should know that the number belongs to a  
4 cellular telephone. Nothing in this subsection may be construed to  
5 increase the number of communications permitted pursuant to  
6 subsection (13)(a) of this section.

7 (19) Intentionally block its telephone number from displaying on  
8 a debtor's telephone.

9 (20) In any manner convey the impression that the licensee is  
10 vouched for, bonded to or by, or is an instrumentality of the state  
11 of Washington or any agency or department thereof.

12 (21) Collect or attempt to collect in addition to the principal  
13 amount of a claim any sum other than allowable interest, collection  
14 costs or handling fees expressly authorized by statute, and, in the  
15 case of suit, attorney's fees and taxable court costs. A licensee may  
16 collect or attempt to collect collection costs and fees, including  
17 contingent collection fees, as authorized by a written agreement or  
18 contract, between the licensee's client and the debtor, in the  
19 collection of a commercial claim. The amount charged to the debtor  
20 for collection services shall not exceed thirty-five percent of the  
21 commercial claim.

22 (22) Procure from a debtor or collect or attempt to collect on  
23 any written note, contract, stipulation, promise or acknowledgment  
24 under which a debtor may be required to pay any sum other than  
25 principal, allowable interest, except as noted in subsection (21) of  
26 this section, and, in the case of suit, attorney's fees and taxable  
27 court costs.

28 (23) Bring an action or initiate an arbitration proceeding on a  
29 claim when the licensee knows, or reasonably should know, that such  
30 suit or arbitration is barred by the applicable statute of  
31 limitations.

32 (24) Upon notification by a debtor that the debtor disputes all  
33 debts arising from a series of dishonored checks, automated  
34 clearinghouse transactions on a demand deposit account, or other  
35 preprinted written instruments, initiate oral contact with a debtor  
36 more than one time in an attempt to collect from the debtor debts  
37 arising from the identified series of dishonored checks, automated  
38 clearinghouse transactions on a demand deposit account, or other  
39 preprinted written instruments when: (a) Within the previous one  
40 hundred eighty days, in response to the licensee's attempt to collect

1 the initial debt assigned to the licensee and arising from the  
2 identified series of dishonored checks, automated clearinghouse  
3 transactions on a demand deposit account, or other preprinted written  
4 instruments, the debtor in writing notified the licensee that the  
5 debtor's checkbook or other series of preprinted written instruments  
6 was stolen or fraudulently created; (b) the licensee has received  
7 from the debtor a certified copy of a police report referencing the  
8 theft or fraudulent creation of the checkbook, automated  
9 clearinghouse transactions on a demand deposit account, or series of  
10 preprinted written instruments; (c) in the written notification to  
11 the licensee or in the police report, the debtor identified the  
12 financial institution where the account was maintained, the account  
13 number, the magnetic ink character recognition number, the full bank  
14 routing and transit number, and the check numbers of the stolen  
15 checks, automated clearinghouse transactions on a demand deposit  
16 account, or other preprinted written instruments, which check numbers  
17 included the number of the check that is the subject of the  
18 licensee's collection efforts; (d) the debtor provides, or within the  
19 previous one hundred eighty days provided, to the licensee a legible  
20 copy of a government-issued photo identification, which contains the  
21 debtor's signature and which was issued prior to the date of the  
22 theft or fraud identified in the police report; and (e) the debtor  
23 advised the licensee that the subject debt is disputed because the  
24 identified check, automated clearinghouse transaction on a demand  
25 deposit account, or other preprinted written instrument underlying  
26 the debt is a stolen or fraudulently created check or instrument.

27 The licensee is not in violation of this subsection if the  
28 licensee initiates oral contact with the debtor more than one time in  
29 an attempt to collect debts arising from the identified series of  
30 dishonored checks, automated clearinghouse transactions on a demand  
31 deposit account, or other preprinted written instruments when: (i)  
32 The licensee acted in good faith and relied on their established  
33 practices and procedures for batching, recording, or packeting debtor  
34 accounts, and the licensee inadvertently initiates oral contact with  
35 the debtor in an attempt to collect debts in the identified series  
36 subsequent to the initial debt assigned to the licensee; (ii) the  
37 licensee is following up on collection of a debt assigned to the  
38 licensee, and the debtor has previously requested more information  
39 from the licensee regarding the subject debt; (iii) the debtor has  
40 notified the licensee that the debtor disputes only some, but not all

1 the debts arising from the identified series of dishonored checks,  
2 automated clearinghouse transactions on a demand deposit account, or  
3 other preprinted written instruments, in which case the licensee  
4 shall be allowed to initiate oral contact with the debtor one time  
5 for each debt arising from the series of identified checks, automated  
6 clearinghouse transactions on a demand deposit account, or written  
7 instruments and initiate additional oral contact for those debts that  
8 the debtor acknowledges do not arise from stolen or fraudulently  
9 created checks or written instruments; (iv) the oral contact is in  
10 the context of a judicial, administrative, arbitration, mediation, or  
11 similar proceeding; or (v) the oral contact is made for the purpose  
12 of investigating, confirming, or authenticating the information  
13 received from the debtor, to provide additional information to the  
14 debtor, or to request additional information from the debtor needed  
15 by the licensee to accurately record the debtor's information in the  
16 licensee's records.

17 (25) Submit an affidavit or other request pursuant to chapter  
18 6.32 RCW asking a superior or district court to transfer a bond  
19 posted by a debtor subject to a money judgment to the licensee, when  
20 the debtor has appeared as required.

21 (26) Collect, or attempt to collect, on any account purchased for  
22 collection by a licensee unless the licensee has completed a  
23 meaningful investigation into the chain of ownership of the account  
24 and has in its possession a copy of a written assignment or bill of  
25 sale which identifies the debtor by name and account number for each  
26 sale or assignment of the account beginning with the original  
27 creditor. A copy of each assignment must be included with any initial  
28 written communication to a debtor.

29 (27) File with any court an affidavit or declaration in support  
30 of a judgment on a claim which fails to inform the court if the  
31 original creditor, or any prior owner of the account, disclaimed the  
32 accuracy or integrity of the account balance, account information,  
33 account records, or other documentation of indebtedness transferred  
34 at the time of sale.

35 **Sec. 3.** RCW 19.16.270 and 2011 c 336 s 522 are each amended to  
36 read as follows:

37 In any action brought by licensee to collect the claim of his,  
38 her, or its customer, the assignment of the claim to licensee by his,  
39 her, or its customer shall be conclusively presumed valid, if the

1 assignment is filed in court with the complaint, unless objection is  
2 made thereto by the debtor in a written answer or in writing five  
3 days or more prior to trial. The provisions of this section do not  
4 apply to delinquent or charged off claims purchased for collection  
5 purposes, whether the purchaser collects the claims itself, or hires  
6 a third party for collection or an attorney for litigation in order  
7 to collect such claims.

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